



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/20640/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10 March 2014**

**Determination
Promulgated
On 23 April 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SUSHMA RANI

Respondent

Representation:

For the Appellant: Ms K Pal, a Senior Home Office Presenting Officer
For the Respondent: Ms R Bagral, instructed by Gills Immigration Law

DETERMINATION AND REASONS

1. The appellant, Sushma Rani, was born on 25 October 1986 and is a citizen of India. I shall hereafter refer to the respondent as “the appellant” and to the Secretary of State as the “respondent” (as they were before the First-tier Tribunal).

2. The appellant had appealed against a decision of the respondent made on 14 February 2013 to refuse or vary her leave to remain in the United Kingdom as the spouse of a person present and settled here. The First-tier Tribunal (Judge Howard) in a determination promulgated on 10 January 2014, dismissed the appeal under the Immigration Rules but allowed it under Article 8 ECHR.
3. The reasoning in the determination is not always clear. The issue for the judge to decide under the Immigration Rules concerned paragraph 281 of HC 395. The judge refers at [19] to what appears to be an unreported decision of the Upper Tribunal (OA/21093/2013) but he fails to explain the relevance in that decision to the issue before him. He concluded, however, at [21] that the appellant could not meet the requirements of paragraph 281, presumably because she had not submitted the necessary English language certificate but this is also somewhat unclear. I was, however, greatly helped at the Upper Tribunal hearing by both Ms Bagral and Ms Pal, for the respondent. Ms Bagral told me that it was clear from the papers which he had been sent by her instructing solicitors that a valid English language certificate had been submitted by the appellant to the respondent but appears to have been overlooked both by the Secretary of State and the First-tier Tribunal Judge. Ms Pal did not disagree with that submission. Although she did not formally withdraw the appeal, but she did disagree with Ms Bagral's submission that Judge Howard should have allowed the appeal under the Immigration Rules.
4. Given that the appeal should be allowed under the Immigration Rules, I did not also determine whether the appeal should have been allowed under Article 8 ECHR immaterial. As a matter of formality, I have set aside the First-tier Tribunal's determination and have remade the decision allowing the appeal under the Immigration Rules.

DECISION

5. The determination of the First-tier Tribunal promulgated on 10 January 2014 is set aside. I remade the decision. The appeal in respect of the Immigration Rules is allowed.

Signed

Date 10 April 2014

Upper Tribunal Judge Clive Lane